

**BEFORE THE  
FEDERAL COMMUNICATIONS Commission  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of the	)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of	)	RM-10586
Fixed And Mobile Broadband Access, Educational	)	
and Other Advanced Services in the 2150-2162 and	)	
2500-2690 MHz Bands	)	
	)	
Part 1 of the Commission's Rules – Further	)	WT Docket No. 03-
Competitive Bidding Procedures	)	
	)	
Amendment of Parts 21 and 74 to Enable	)	MM Docket No. 97-217
Multipoint Distribution Service and the	)	
Instructional Television Fixed Service to Engage	)	
in Fixed Two-Way Transmissions	)	
	)	
Amendment of Parts 21 and 74 of the	)	WT Docket No. 02-68
Commission's Rules With Regard to Licensing	)	RM-9718
in the Multipoint Distribution Service and in the	)	
Instructional Television Fixed Service for	)	
the Gulf of Mexico	)	
	)	

**REPLY COMMENTS OF WIRELESS DIRECT BROADCAST SYSTEM**

Wireless Direct Broadcast System ("WDBS"), pursuant to Section 1.415(c) of the Commission's rules, hereby submits its Reply Comments to the *Report and Order and Further Notice of Proposed Rulemaking* ("Order")<sup>1</sup> in the above-referenced proceeding. WDBS submitted Comments on January 10, 2005 ("Comments").

---

<sup>1</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (July 29, 2004). A synopsis of the Order was published in the Federal Register on December 10, 2004. 69 Fed. Reg. 72020.

## **I. Meeting Substantial Service Requirements**

In addition to supporting the adoption of the Part 27 substantial service requirements in its Comments, WDBS supports suspending all Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) licensees from having to meet such requirements until five years after the filing of a station’s post-transition notification. Any renewals that arise during the five years after filing of the post-transition notification period should be automatically granted with a condition that such stations must file an application at the end of the five year mark indicating how it has met the substantial service requirements. This will allow a sufficient period for BRS and EBS stations to deliver service to the public after enactment of the new rules and transition to their new channel allocation.

WDBS advocates the position that each BRS and EBS license should be individually reviewed by the Commission to determine if such station is meeting its substantial service requirements. Whether a station is leased should be irrelevant, as to allow operators to hold on to such spectrum for future use indefinitely, particularly after the timeframe provided above, is merely a new form of warehousing spectrum. However, WDBS would support the creation of specific criteria that a licensee must meet to be held for future use, such as for the licensee (and its lessee) to show how significant growth in operation of the system, of which the renewing station is a part, would deem the need for such spectrum within the two years following the station’s expiration date. If not put into effective use within such two year period, the license should be cancelled and made available to other interested parties. ~~WDBS does not support~~ WDBS does not support allowing the Commission to consider past operation of a station in meeting its substantial service requirements if such operation has been permanently discontinued. This again is another means of warehousing spectrum. The only exception to such non-service should be for a licensee whose

operations were concluded within one year before its renewal period due to the termination of a lease with an operator. In those situations, the licensee should be provided an additional year in which to forge a relationship with a new operator and resume operations or risk having its license terminated.

## **II. Auctioning of Spectrum**

WDBS supports the auctioning of EBS channels by individual channel groups as opposed to issuing Basic Trading Area (“BTA”) authorizations with all available EBS channels (as the BRS channels are already associated with a specific BTA). This would greatly simplify the variation in licenses in the Broadband Communications Service, as EBS licenses are currently only issued by channel group. WDBS reaffirms its support that such licenses should be issued on a BTA-wide basis. Furthermore, WDBS reaffirms its initial Comments that auction of any available BRS BTA authorizations or EBS spectrum be held immediately, with a second auction of any remaining available spectrum to be held after transition of the stations is complete. Like many other operators, there is spectrum that WDBS has needed to use in its market for years, which has laid dormant and which should be made available now that the rulemaking process has significantly progressed. In addition, WDBS reverses the position it took in its Comments and now does support issuing MidBand channels separately from Lower and Upper Band Channels.

WDBS is also in support of not subjecting any channel to auction in which only one entity has an interest. Rather, the FCC should grant such license to the sole entity, particularly since it is most likely that such licenses will either be located in a rural area or constitute a MidBand channel, in which only a handful of entities seem interested.

### **III. Regulatory Fees**

WDBS supports exempting EBS licensees from regulatory fees, preferring not to subject educational institutions and non-profit organizations to such payments. All other BRS regulatory fees should be based on a MHz / pops calculation as supported by other commenters in this proceeding.

### **IV. Wireless Cable Exception Rule**

WDBS supports the elimination of the wireless cable exception rule, as this rule has outlived its purpose of allowing commercial wireless cable operators access to unused EBS spectrum.

### **CONCLUSION**

WDBS requests that the Commission consider its Reply Comments when enacting its rules in this proceeding and thanks it for its consideration in this important matter.

Respectfully submitted,

**WIRELESS DIRECT BROADCAST SYSTEM**

McLain

By     /s/ John

John McLain

February 8, 2005